



[600.1189]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re: Application of: Serge LANVIN, et al.
Serial No.: 09/994,394
Filed: November 26, 2001
For: A DEVICE FOR PERFORATING MATERIAL WEBS
Art Unit: 3724
Examiner: HAMILTON, ISAAC N.

Mail Stop: APPEAL
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

March 24, 2004

RECEIVED

APR 01 2004

APPELLANTS' BRIEF UNDER 37 C.F.R. § 1.192

TECHNOLOGY CENTER R3700 Sir:

Appellants submit this brief for the consideration of the Board of Patent Appeals and Interferences (the "Board") in support of their appeal of the Final Rejection dated October 23, 2003 in this application. An original and two copies of this brief are submitted herewith. The statutory fee of \$330.00 is paid concurrently herewith.

1. REAL PARTY IN INTEREST

The real party in interest is Heidelberger Druckmaschinen AG, a German corporation having a place of business at Kurfuersten-Anlage 52-60, D-69115 Heidelberg, Germany, the assignee of the entire right, title and interest in the above-identified patent application. The invention was assigned by inventors Lanvin and

03/29/2004 EAREGAY1 00000081 09994394

01 FC:1402

330.00 OP

Robert to Heidelberger Druckmaschinen AG. The assignment was recorded on April 3, 2002 at reel 012786/ frame 0260.

2. RELATED APPEALS AND INTERFERENCES

Appellants, their legal representatives, and assignee are not aware of any appeal or interference that directly affects, will be directly affected by, or will have a bearing on the Board's decision in this appeal.

3. STATUS OF CLAIMS

Claims 1 to 19 are pending. Claims 1 to 19 have been finally rejected as per the Final Office Action dated October 23, 2003.

The rejection to claims 1 to 19 thus is appealed. A copy of appealed claims 1 to 19 is attached hereto as Appendix A.

4. STATUS OF AMENDMENTS AFTER FINAL

A Response to the Final Office Action, without amendments, was filed on January 23, 2004 and was considered by the Advisory Action of February 25, 2004. Thus no amendments after final were presented or entered.

5. SUMMARY OF THE INVENTION

The present invention provides a perforating tool (e.g., 15 in Fig. 3, see, e.g., specification at paragraph [0030]) for perforating single or multiple layer material webs or sheets (e.g. 1, see, e.g., specification at paragraph [0026]) separated therefrom, the perforating tool (e.g., 15 in Fig. 3, see, e.g., specification at paragraph [0030]) comprising: a first section (e.g., 16 in Fig. 3, see, e.g., specification at paragraph [0031]) having a plurality of perforating teeth (e.g., 28 in Fig. 3, see, e.g., specification at paragraph [0031]) and a perforation-free gap (e.g., 18 in Fig. 3, see, e.g., specification at paragraph [0032]); and a second section (e.g., 17 in Fig. 3, see, e.g., specification at paragraph [0033]) having a cutting zone (e.g., 19 in Fig. 3, see, e.g., specification at paragraph [0033]) and at least one group of perforating elements (e.g., 22 in Fig. 3, see, e.g., specification at paragraph [0033]) in alternating sequential

fashion, the perforating elements (e.g., 22 in Fig. 3, see, e.g., specification at paragraph [0033]) being angled with respect to a longitudinal axis of the second section (e.g., 17 in Fig. 3, see, e.g., specification at paragraph [0033]); the first section (e.g., 16 in Fig. 3, see, e.g., specification at paragraph [0031]) being adjacent the second section (e.g., 17 in Fig. 3, see, e.g., specification at paragraph [0033]) at a fold center line (e.g., 29 in Fig. 5.1), the perforation-free gap (e.g., 18 in Fig. 3, see, e.g., specification at paragraph [0032]) of the first section extending from the fold center line (e.g., 29 in Fig. 5.1) to the plurality of perforating teeth (e.g., 28 in Fig. 3, see, e.g., specification at paragraph [0031]).

The angle of the perforating element preferably may be 30°, as discussed in the specification at [0012].

The length of the first section and the second section may be the same, as recited in original claim 10, and as indicated by the terms half and center used throughout the specification.

6. ISSUES

Whether claims 1 to 6 and 8 to 19 should be rejected under 35 U.S.C. § 102(b) as being anticipated by Foster et al. (U.S. Patent No. 5,524,930) and whether claim 7 should be rejected under 35 U.S.C. §103(a) as being unpatentable over Foster in view of Wadzinski (U.S. Patent No. 5,146,829).

7. GROUPING OF CLAIMS

Since the claims do not stand or fall together, the claims are grouped as follows:

GROUP I: Claims 1 to 4, 6 to 12, 14, 15, 17 and 18 directed to a perforating tool or device.

GROUP II: Claim 5 directed to the tool where the perforating lements are angled at 30 degrees.

GROUP III: Claim 13 directed to the tool where the first and second sections have an equal length.

GROUP IV: Claims 16 and 19 directed to the tool where the fold center line

is at the center of two halves.

8. ARGUMENTS

GROUP I:

Claims 1 to 4, 6, 8 to 12, 14, 15, 17 and 18 of Group I were rejected under 35 U.S.C. §102(b) as being anticipated by Foster et al. (U.S. Patent No. 5,524,930).

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Foster in view of Wadzinski (U.S. Patent No. 5,146,829).

Claim 1 recites a perforating tool for perforating single or multiple layer material webs or sheets separated therefrom, the perforating tool comprising:

a first section having a plurality of perforating teeth and a perforation-free gap;
and

a second section having a cutting zone and at least one group of perforating elements in alternating sequential fashion, the perforating elements being angled with respect to a longitudinal axis of the second section;

the first section being adjacent the second section at a fold center line, the perforation-free gap of the first section extending from the fold center line to the plurality of perforating teeth.

The Advisory Action states that the fold center line in Foster is at the right tip of element 16 in Fig. 1. This location clearly is not the fold center line for the tool in Foster, as the fold center line is actually in the middle of cutting edge 16, as shown clearly by the cut in Fig. 4, as the chopper fold line goes directly through the cut caused by element 16. See Foster at column 4, lines 30 to 44 for example.

Withdrawal of the rejection to claims 1, 14 and 15 and its dependent claims, including claim 7, for this reason is respectfully requested.

GROUP II:

Claim 5 was rejected under 35 U.S.C. §102(b) as anticipated by Foster.

Claim 5 recites that the angle of the perforating elements is 30°.

Foster discloses that its teeth are angled from 10 to 40 degrees. See column 4, lines 19 and 20. However, within this wide range Foster does not teach or disclose the

species of a 30 degree angle, which has particular advantages for the present invention as stated at [0012]. The limitation is clearly not anticipated, nor obvious. See MPEP 2131.03 and 2144.08.

Withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

GROUP III

Claim 13 was rejected under 35 U.S.C. §102(b) as anticipated by Foster.

Claim 13 recites the perforating tool as recited in claim 1 "wherein a length of the first section and a length of the second section are the same."

The Final Office Action states that the lengths of the sections in Foster in Fig. 3 are the same. However, this is not shown at all in Fig. 3, as the full sections are not even shown, but rather only a partial view is shown.

Withdrawal of the rejection to claim 13 is respectfully requested.

GROUP IV

Claims 16 and 19 were rejected under 35 U.S.C. §102(b) as anticipated by Foster, and recite that the fold center line is at the center of two halves.

The Advisory Action states that center is a broad term that can be interpreted as a wide area between the edges of the tool, and that halves are not necessarily exact halves. However, this is not how one of skill in the art would interpret center reading the present specification and claims. In the Advisory Action interpretation, claims 16 and 19 would not add any limitation at all and would be superfluous.

However, applicant has specifically stated that as used in claims 16 and 19, the fold center line defines the center, i.e. the midpoint of the of tool, which is a commonly-accepted definition of center and the only one which makes sense in light of the present claims. Support for the claimed definition of center is found for example in original claim 13, which states that the sections are of equal length.

Withdrawal of the rejection to claims 16 and 19 for this reason as well is respectfully submitted.

Respectfully submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: 

William C. Gehris

Reg. No. 38,156

DAVIDSON, DAVIDSON & KAPPEL, LLC
485 Seventh Avenue, 14th Floor
New York, NY 10018
Tel: (212) 736-1940
Fax: (212) 736-2427